

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I. (a) **PLAINTIFFS** BOARD OF TRUSTEES OF THE SHEET METAL WORKERS LOCAL 104 HEALTH CARE PLAN, BOARD OF TRUSTEES OF THE SHEET METAL WORKERS PENSION TRUST OF NORTHERN CALIFORNIA, SHEET METAL WORKERS LOCAL 104 VACATION, HOLIDAY SAVINGS PLAN; ANTHONY ASHER, TRUSTEE.

**DEFENDANTS** MMA ENTERPRISES INC., doing business as SILICON VALLEY MECHANICAL, a California corporation,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF ALAMEDA  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)  
**ERSKINE & TULLEY**  
220 MONTGOMERY STREET, SUITE 303  
SAN FRANCISCO, CA 94104 (415) 392-5431

ATTORNEYS (IF KNOWN)

**EMC**

**E-filing**

**ADR**

## II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ Original Proceeding  
☐ Removed from State Court  
☐ Remanded from Appellate Court  
☐ Reinstated or Reopened  
☐ Transferred from Another district (specify)  
☐ Multidistrict Litigation  
☐ Appeal to District Judge from Magistrate Judgment

## V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Amer w/ disab - Empl <input type="checkbox"/> 446 Amer w/ disab - Other <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 91 Empl.Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

## VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

**This action seeks to compel defendants to pay delinquent trust fund contributions pursuant to the collective bargaining agreement and other agreements executed by defendants and**

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ ☐ CHECK YES only if demanded in complaint: JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE"

## IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

DATE 08/25/08

SIGNATURE OF ATTORNEY OF RECORD

Michael J. Carroll (St. Bar #50246)

ERSKINE & TULLEY  
A PROFESSIONAL CORPORATION  
MICHAEL J. CARROLL (ST. BAR #50246)  
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Facsimile: (415) 392-1978

Attorneys for Plaintiffs

E-filing

EMC

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CV 08

4100

BOARD OF TRUSTEES OF THE SHEET METAL WORKERS)  
LOCAL 104 HEALTH CARE PLAN, BOARD OF )  
TRUSTEES OF THE SHEET METAL WORKERS PENSION )  
TRUST OF NORTHERN CALIFORNIA, SHEET METAL )  
WORKERS LOCAL 104 VACATION, HOLIDAY SAVINGS )  
PLAN; ANTHONY ASHER, TRUSTEE, )

Plaintiffs,

vs.

MMA ENTERPRISES INC., doing business as  
SILICON VALLEY MECHANICAL, a California  
corporation,

Defendant.

NO. \_\_\_\_\_

COMPLAINT

Plaintiffs complain of defendant and for a cause of action  
alleges that:

1. Jurisdiction of this Court is founded upon Section 301  
(c)(1) of the National Labor Relations Act of 1947 [29 U.S.C. §185(a)]  
and Section 502 of the Employee Retirement Income Security Act of  
1974, said Act being hereinafter referred to as "ERISA" (29 U.S.C.  
§1132), in that defendant has violated a collective bargaining  
agreement and certain Trust Agreements, thereby violating the  
provisions of ERISA and the provisions of the National Labor Relations

COMPLAINT

1 Act of 1947. This action is also brought pursuant to the Federal  
2 Declaratory Judgment Act (28 U.S.C. §2201 et seq.) in a case of actual  
3 controversy between plaintiffs and defendant, and for a Judgment that  
4 defendant pay fringe benefit contributions in accordance with its  
5 contractual obligations.

6           2. Plaintiffs Boards of Trustees of the Trust Funds named  
7 in the caption (hereinafter "Trust Funds") are trustees of employee  
8 benefit plans within the meaning of §§3(1) and (3) and §502(d)(1) of  
9 ERISA, 29 U.S.C. §1002(1) and (3) and §1132(d)(1), and a multiemployer  
10 plan within the meaning of §§3(37) and 515 of ERISA, 29 U.S.C.  
11 §§1002(37) and §1145. Plaintiff Anthony Asher is a trustee. Said  
12 Trust Funds are authorized to maintain suit as independent legal  
13 entities under §502(d)(1) of ERISA, 29 U.S.C. §1132(d)(1).

14           3. Plaintiffs are informed and believes and thereupon  
15 alleges that defendant, MMA ENTERPRISES INC., resides and does  
16 business in San Jose, California. Performance of the obligations set  
17 forth therein is in this judicial district.

18           4. Each and every defendant herein is the agent of each  
19 and every other defendant herein. Defendants and each of them are  
20 engaged in commerce or in an industry affecting commerce.

21           5. At all times pertinent hereto defendant was bound by  
22 a written collective bargaining agreement with Sheet Metal Workers  
23 Local Union No. 104, a labor organization in an industry affecting  
24 commerce. The aforesaid agreement provide that defendant shall make  
25 contributions to the TRUST FUNDS, on behalf of defendant's employees  
26 on a regular basis on all hours worked, and that defendant shall be  
27 bound to and abide by all the provisions of the respective Trust  
28 Agreements and Declarations of Trust of said TRUST FUNDS (hereinafter

1 the "Trust Agreements").

2           6. Defendant has breached both the provisions of the  
3 collective bargaining agreement and Trust Agreements referred to above  
4 by failing to pay moneys due thereunder on behalf of defendant's  
5 employees to the TRUST FUNDS. Said breach constitutes a violation of  
6 ERISA (29 U.S.C. 1102, et seq.) and of the National Labor Relations  
7 Act of 1947.

8           7. Pursuant to the terms of the collective bargaining  
9 agreements, there is now due, owing and unpaid from defendant to the  
10 TRUST FUNDS the following:

11           a. Contributions for hours worked by covered employees  
12 found due by a payroll audit for the period April 1, 2004 through  
13 March 31, 2007, and liquidated damages, interest and test fees which  
14 are specifically provided for by said agreement. The total amount due  
15 is \$1,548.18. Additional monthly amounts will become due during the  
16 course of this litigation and in the interest of judicial economy,  
17 recovery of said sums will be sought in this case. Interest is due  
18 and owing on all principal amounts due and unpaid at the legal rate  
19 from the dates on which the principal amounts due accrued. Interest  
20 continues to accrue on the principal amount.

21           8. Demand has been made upon said defendant, but defendant  
22 has failed and refused to pay the amounts due the TRUST FUNDS or any  
23 part thereof; and there is still due, owing and unpaid from defendant  
24 the amounts set forth in Paragraph 7 above.

25           9. An actual controversy exists between plaintiffs and  
26 defendant in that plaintiffs contend that plaintiffs are entitled to  
27 a timely monthly payment of trust fund contributions now and in the  
28 future pursuant to the collective bargaining agreement and the Trust



1 Agreements, and defendant refuses to make such payments in a timely  
2 manner.

3 10. The Trust Agreements provide that, in the event suit  
4 is instituted to enforce payments due thereunder, the defendant shall  
5 pay court costs and reasonable attorneys' fee. It has been necessary  
6 for plaintiff to employ ERSKINE & TULLEY, A PROFESSIONAL CORPORATION,  
7 as attorneys to prosecute the within action, and reasonable  
8 attorneys' fee should be allowed by the Court on account of the  
9 employment by plaintiff of said attorneys.

10 WHEREFORE, plaintiff prays:

11 1. That the Court render a judgment on behalf of  
12 plaintiffs for all contributions due and owing to the date of  
13 judgment, plus liquidated damages provided for by the contract,  
14 interest at the legal rate, reasonable attorneys' fees incurred in  
15 prosecuting this action and costs.

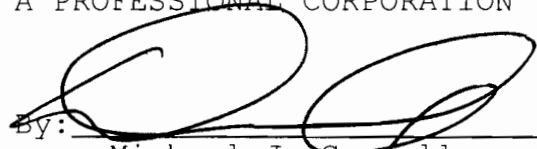
16 2. That the Court enjoin the defendant from violating the  
17 terms of the collective bargaining agreement and the Trust Agreements  
18 for the full period for which defendant is contractually bound to file  
19 reports and pay contributions to the TRUST FUNDS.

20 3. That the Court retain jurisdiction of this cause  
21 pending compliance with its orders.

22 4. For such other and further relief as the Court deems  
23 just and proper.

24 DATED: August 25, 2008

ERSKINE & TULLEY  
A PROFESSIONAL CORPORATION

25  
26  
27 By:   
28 Michael J. Carroll  
Attorneys for Plaintiffs